

INTERIM IRM PROCEDURAL UPDATE

DATE: 12/03/2009

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SUBJECT: New Instructions for Processing Carrybacks filed under the Worker, Homeownership, and Business Assistance Act of 2009

AFFECTED IRM(s)/SUBSECTION(s): 21.5.9

CHANGE(s):

IRM 21.5.9.5.14.6.1(1) – Added Caution: Extended carryback applications and claims that were prepared and signed on or after Nov. 6, 2009 may not be ARRA carrybacks. Taxpayers may be filing a 3, 4, or 5-year carryback under the Worker, Homeownership, and Business Assistance Act (WHBAA) of 2009, which allows almost all businesses to carryback losses incurred in 1008 or 2009 for up to 5 years. These taxpayers are not subject to the \$15M gross receipts test. Before rejecting or disallowing an extended carryback that was prepared and signed on or after Nov. 6, 2009, follow the procedures in IRM 21.5.9.5.14.7.4.

IRM 21.5.9.5.14.7 – Added new IRM subsection titled: “Worker, Homeownership, and Business Assistance Act of 2009 (PL-111-92, Section 13) – Net Operating Losses”, which provides instructions for processing extended carryback applications and claims filed under Rev. Proc. 2009-52.

IRM 21.5.9.5.14.7 – NEW

Worker, Homeownership, and Business Assistance Act of 2009 (PL 111-92, Section 13) - Net Operating Losses

1. The Worker, Homeownership, and Business Assistance Act (WHBAA) of 2009 was signed into law on November 6, 2009 as Public Law 111-92. Section 13 of the Act amends § 172(b)(1)(H) and 810(b) of the Internal Revenue Code to allow almost all businesses to make an irrevocable election to carry back a Net Operating Loss (NOL) for one year that begins or ends in 2008 or 2009 for an extended period (either 3, 4, or 5 years). Unlike ARRA 2009, Section 1211, the \$15M gross receipts test does not apply to taxpayers making a WHBAA election. The legislation also allows life insurance companies to elect to carry back an applicable loss from operations for 4 or 5 taxable years. (The normal carryback period for a loss from operations is 3 years.) Revenue Procedure (Rev. Proc.) 2009-52 was published on Nov. 20, 2009 to provide guidance to taxpayers on when and how to make the irrevocable election under WHBAA 2009, Section 13, and file the applicable carryback applications and claims.

EXCEPTION: This legislation does not apply to any taxpayer that received certain benefits (whether or not repaid) under the Emergency Economic Stabilization Act of 2008, Title I of Div. A of Public Law No. 110-343, 122 Stat. 3765 (TARP recipients), or to members of the taxpayer's affiliated group. Rev. Proc. 2009-52 requires all taxpayers making an election under WHBAA, Section 13 to make an affirmative statement that they are not a TARP recipient nor, in 2008 or 2009, an affiliate of a TARP recipient. See IRM 21.5.9.5.14.7.2 for more information on the election statement requirements.

NOTE: While a TARP recipient cannot make a WHBAA 2009, Section 13 election, they can still file a normal 2-year carryback.

2. **Tax Years (Loss Years) Available for Making the Election** - The law is in effect for tax years ending after Dec. 31, 2007 and beginning before Jan. 1, 2010 (tax years 200801 through 201011).
 - Taxpayers can make the election for one tax year that either begins or ends in 2008 or 2009.
 - For calendar year filers, the election can be made for either 200812 or 200912.
 - A fiscal year filer whose tax year ends in January could choose between three tax years to make the election: 200801, 200901, or 201001.
 - The tax years open for fiscal year filers to make this election are those between 200801 (the first tax year ending in 2008) and 201011 (the last tax year beginning in 2009).
3. **Time for Making the Election** - The election must be made (whether for a 2008 or 2009 NOL) by the due date (including extensions) of the taxpayer's last taxable year beginning in 2009. Per Treas. Reg. § 301.9100-2, if the taxpayer files a timely return for the taxpayer's last taxable year beginning in 2009, the taxpayer may make the election within six months of the normal due date (excluding extensions). Once made, the election is irrevocable.
 - For most individuals, the election must be made by April 15, 2010 (or Oct. 15, 2010 if an extension was filed). If the taxpayer timely files his 200912 tax return, then the taxpayer has until Oct. 15, 2010 to make the election per Treas. Reg. § 301.9100-2.
 - For a calendar year corporation, the election must be made by March 15, 2010 (or Sept. 15, 2010 if an extension was filed). If the taxpayer timely files the 200912 tax return, then the taxpayer has until Sept. 15, 2010 to make the election per Treas. Reg. § 301.9100-2.
 - A fiscal year corporation whose tax year ends in February must make the election by May 15, 2010 (assuming no extension was filed). If the taxpayer timely files the 201002 return, the taxpayer has until Nov. 15, 2010 to make the election per Treas. Reg. § 301-9100-2. For this taxpayer, the last tax period beginning in 2009 is

the period beginning March 1, 2009 and ending Feb. 28, 2010. The normal due date of that return is May 15, 2010.

EXAMPLE: An individual taxpayer wishes to make a WHBAA election for his 200812 tax year. The taxpayer has until April 15, 2010 to make the WHBAA election for his 200812 tax year (the due date of his 200912 tax return). If the taxpayer timely files his 200912 tax return, then the taxpayer has until Oct. 15, 2010 to make the election for his 200812 tax year.

4. **Methods for Making the Election** - The taxpayer can make the election in one of the two ways described below. The time period for making the election is the same, whichever method the taxpayer elects.

- a The taxpayer can make the election by attaching a statement to the federal income tax return for the taxable year in which the applicable NOL arises. A taxpayer that already filed its federal income tax return for the taxable year of the applicable NOL may make the election by attaching a statement to an amended return for the taxable year of the NOL. **The election statement must state that the taxpayer is electing to apply § 172(b)(1)(H) or § 810(b)(4) under Rev. Proc. 2009-52 and specify the length of the NOL carryback period the taxpayer elects (3, 4, or 5 years). A taxpayer making the election in this manner must attach a copy of the election statement to the taxpayer's carryback application or claim. See IRM 21.5.9.5.14.7.2 for more information on the election statement requirements.**

EXAMPLE: A calendar year corporation filed its 200812 return on extension on Sept. 15, 2009. The taxpayer can make the WHBAA election for the 200812 tax year by filing a Form 1120X for 200812, and attaching the election statement, by the due date of the corporation's 200912 tax return (by March 15, 2010, if no extension was filed, or by Sept. 15, 2010 if the taxpayer timely files its 200912 return). When the corporation files the carryback application or claim, it must include a copy of the election statement with the carryback application/claim.

REMINDER: Once the taxpayer makes the irrevocable election using this method, the actual carryback can be filed at any time during the normal statutory period for filing a carryback application or claim. The taxpayer must include a copy of the election statement when the carryback is filed.

- b The taxpayer can make the election by simply attaching an election statement to the carryback application or claim (Form 1045, 1139, 1040X, 1120X, etc.) **The election statement must state that the taxpayer is electing to apply § 172(b)(1)(H) or § 810(b)(4) under**

Rev. Proc. 2009-52 and specify the length of the NOL carryback period the taxpayer elects (3, 4, or 5 years). See IRM 21.5.9.5.14.7.2 for more information on the election statement requirements.

EXAMPLE: The same taxpayer, as in the example above, can make the election by simply filing the carryback application or claim and attaching the required election statement by March 15, 2010. (or by Sept. 15, 2010 if the 200912 tax return is timely filed.)

5. **Extension of the Normal Time Period for Filing a Tentative Carryback (Form 1045 or 1139)** - If the taxpayer's applicable NOL tax year (2008 or 2009) ended before Nov. 6, 2009, the taxpayer may file a tentative application (Form 1045 or 1139) on or before the due date (including extension) for filing the return for the taxpayer's last taxable year beginning in 2009. This extension covers loss year tax periods between 200801 and 200910 and only applies to taxpayers making a WHBAA 2009, Section 13 election.

EXAMPLE: An individual, whose electing tax year ended on Dec. 31, 2008 (200812), has until April 15, 2010 (assuming no extension was filed for 200912) to file a Form 1045. (Normally, the taxpayer would only have until Dec. 31, 2009 to file Form 1045.)

EXAMPLE: A fiscal year corporation, whose electing tax year is Jan. 31, 2008 (200801), has until April 15, 2010 (the due date of the taxpayer's last taxable year beginning in 2009, which is the tax year beginning Feb. 1, 2009) to file Form 1139. (Normally, the taxpayer would only have until Jan. 31, 2009 to file Form 1139.) If the taxpayer makes the election for 200901 instead of 200801, the same extended date for filing Form 1139 would apply.

6. **Revocation of Prior Election to Waive the Carryback Period under Section 172(b)(3) or 810(b)(3)** - Taxpayers that previously made an election to waive the carryback period (2008 or 2009) under § 172(b)(3) or in the case of a life insurance company, under § 810(b)(3), may revoke that election. The revocation must be made before the due date (including extension) of the taxpayer's last taxable year beginning in 2009. For example, a calendar year corporation that filed an extension must revoke the prior carryback waiver before Sept. 15, 2010 (the extended due date for the 200912 tax year). An individual, who did not file an extension, must revoke the prior carryback waiver before April 15, 2010. A tentative carryback application (Form 1045 or 1139) can also be filed, if done by the same date. **The election statement must state that the taxpayer is revoking an NOL (or loss from operations) carryback waiver and electing a new NOL carryback under Rev. Proc. 2009-52 and that the taxpayer is not a TARP recipient nor, in 2008 or 2009, an affiliate of a TARP recipient, and must specify the length of the NOL carryback period the taxpayer elects (3, 4, or 5 years).**

See IRM 21.5.9.5.14.7.2 for more information on the required election statement.

7. **Special Rules for Carryback to the 5th Year** - If a taxpayer elects under WHBAA 2009, Section 13 to carryback a 2008 or 2009 loss for 5 years, the amount of the NOL that can be carried back to the 5th year is limited to 50 percent of the taxpayer's taxable income for the carryback taxable year. The taxable income is computed without regard to the NOL for the loss year or any taxable year thereafter. The excess of the amount of the loss over 50 percent of the taxable income is carried to each of the other taxable years preceding the loss year. For the carryback of an alternative tax NOL to the 5th year, the 50 percent limitation is applied separately based on the alternative minimum taxable income. Only the 5th carryback year is affected. If the taxpayer does not limit the NOLD in the 5th year to 50 percent of taxable income, reject the carryback, using Letter 216C for TENTS or Letter 916C for RINTS and use the following language: **"Per IRC Section 172(b)(1)(H)(iv), you must limit the amount of the net operating loss carried back to the 5th year to 50 percent of the taxable income for that year"**.
8. **Alternative Tax Net Operating Loss Deduction** - For taxpayers who make a WHBAA NOL election, the 90% limit on the alternative tax NOL deduction (ATNOLD) does not apply. This applies to taxable years ending after Dec. 31, 2002.

IRM 21.5.9.5.14.7.1 – NEW

Special Rules for Taxpayers that Previously Filed a Carryback for Loss Year 2008 or 2009

1. A taxpayer that previously filed a carryback for a tax year beginning or ending in 2008 or 2009 (generally a 2-year carryback) can make a WHBAA election using one of the two methods for making the election. See IRM 21.5.9.5.14.7(3) and (4). **In addition to the other required election statements, the taxpayer must state that the election amends a previous carryback application or claim.** See IRM 21.5.9.5.14.7.2 for more information on the election statement requirements.

EXCEPTION: A taxpayer that made an ARRA 2009, Section 1211 election and filed a 3, 4, or 5 year carryback cannot amend their previous carryback in order to make a WHBAA election for the same tax year. Once made, an ARRA 2009, Section 1211 election is irrevocable.

2. WHBAA amended carrybacks may be filed as amended tentative carryback applications on Form 1139 or Form 1045 or they may be filed as separate carryback claims on Form 1040X or Form 1120X.
3. **WHBAA 2009, Section 13 - Amended Carrybacks Filed on Forms 1045 or 1139** - If the taxpayer chooses to amend a prior carryback using a tentative carryback form, any required reassessments to carryback years 1 and/or 2

can be made on the basis of the amended Form 1139 or 1045. You must carefully examine the amended tentative carryback application to determine whether there is sufficient NOLD available, after application to carryback years 5, 4, and/or 3, to also cover the carryback adjustments that were previously made to carryback years 1 and/or 2, and make adjustments to carryback years 1 and/or 2 as appropriate. Carefully analyze the taxpayer's statements and attachments to the amended Form 1139/1045, the remaining NOLD after carryback to the extended tax years, and the prior adjustments to carryback years 1 and 2 to ensure the correct adjustment action is taken on each case.

EXAMPLE: The taxpayer previously had \$500,000 NOLD to carry back from 200812. \$100,000 was carried back to 200612 and \$100,000 was carried back to 200712. The remaining \$300,000 would have been carried forward. The taxpayer now makes a WHBAA 2009, Section 13 election to amend the prior carryback. He submits Form 1139 with the required election statement, and elects a 5 year carryback. Per the amended Form 1139, \$100,000 is carried back to 200312, \$100,000 to 200412, and \$100,000 to 200512. As you review the Form 1139, you see that there is sufficient NOLD available to cover the \$200,000 that was previously carried back - \$100,000 to 200612 and \$100,000 to 200712. No carryback tax reassessments are needed on 200612 and 200712. In this case, the Form 1139 may not make any reference to 200612 or 200712, since there was no change to those years, but the taxpayer may have included an explanation of the amended adjustments as an attachment to the form. Or, the taxpayer may have included the 200612 and 200712 tax years and entered the same amounts that were previously carried back. An analysis of the 200612 and 200712 modules would show these adjustments were previously made and the taxpayer is simply showing that the revised carrybacks to those years are unchanged. A thorough analysis is always required when working these types of cases.

4. **WHBAA 2009 Section 13 - Amended Carrybacks Filed on Forms 1040X, 1120X, 1041, 1120-C, or 990-T** - If the taxpayer chooses to amend a prior carryback using an amended return (Form 1040X, 1120X, 1041, 1120-C, 990-T), the same examiner must work all the carryback claim years simultaneously since the amended carrybacks for years 1 and/or 2 may be reassessments and years 3, 4, and/or 5 may be allowances. Be sure you have amended returns for all affected years. If you are missing years 1 or 2, research IDRS/CIS to see if one or both of the years were assigned to another examiner. If so, have the case(s) reassigned to you. If the taxpayer makes an election to amend a prior 2-year carryback, and only files amended returns for the extended tax years (3 and/or 4 and/or 5), check to see if the remaining NOLD is sufficient that no carryback reassessment would be required in years 1 and/or 2.

- If the remaining NOLD is sufficient that no carryback reassessment would be required in either carryback years 1 or 2, then continue processing without amended returns for years 1 and 2.
- If the remaining NOLD is not sufficient, and a carryback reassessment to the previous carryback adjustments in years 1 and/or 2 would be required, then do not process the RINTS for years 3, 4, or 5. Instead, send the taxpayer Letter 916C (using 2 open paragraphs) using the sample language below. Modify the language for the actual tax periods involved, the amended returns that are missing, and the number of years the taxpayer has elected.

"We are unable to process your amended carryback claims, filed under Section 13 of the Worker, Homeownership, and Business Assistance Act of 2009 for tax years ending Dec. 31, 2003, Dec. 31, 2004, and Dec. 31, 2005, to carry back losses from tax year ending Dec. 31, 2008."

"You did not submit amended carryback returns for tax years ending Dec. 31, 2006 and Dec. 31, 2007. Losses from tax year ending Dec. 31, 2008 were previously carried back to those tax years. Please resubmit amended carryback claims for all five years. "

5. We anticipate a significant number of taxpayers will take advantage of this legislation and amend their previously filed carrybacks to claim a longer carryback period. These adjustments can be very complex and require a high level of skill in determining the appropriate adjustment actions to take, including but not limited to:
 - skill in analyzing both the information the taxpayer has provided and the prior carryback adjustments to determine if any reassessments are required in tax years 1 and/or 2,
 - knowledge of hold codes, posting delay codes, priority codes, adjustment posting cycles, and offset routines,
 - knowledge of the correct transaction codes and transaction dates to use when manually offsetting overpayments from years 3, 4, or 5 to pay off tax and reversed credit interest (TC 777 or 772) in years 1 or 2,
 - skill in the manual recalculation of any credit interest previously paid in years 1 or 2, which will be reduced or eliminated with the amended carryback,
 - knowledge of the conditions that set the -E freeze on BMF accounts, which prevents normal offset routines from occurring,
 - skill in determining when a manual refund for a partial amount of the overpayment is appropriate, in order to reduce the amount of credit interest paid.

NOTE: Due to the complexity and the large dollar amounts that may be involved, we recommend these cases be assigned to a highly skilled, specialized group of carryback employees in each campus.

6. If an adjustment is necessary to carryback years 1 and/or 2, use the following guidelines for making the adjustment(s):
 - If the NOL on the amended carryback is completely used up in years 3, 4, or 5, and there is no NOL to carryback to years 1 and/or 2, then reverse the original carryback adjustments in years 1 and/or 2. Use the overpayment(s) from years 3, 4, or 5 to pay off the balance due(s) created in years 1 and/or 2 before allowing any money to offset to other debts or refund.
 - If the NOL on the amended carryback reduces the amount previously allowed in years 1 and/or 2, then do a partial reassessment (the difference between what was originally allowed and the revised amount). Again, use the overpayments from years 3, 4, or 5 to pay off the balance due(s) created in years 1 and/or 2.
 - If the amended carryback would require no change to the prior NOL tax decrease in carryback years 1 and/or 2 (the TC 295 or TC 299 amount), do not reverse the adjustment. If the only adjustments necessary are to AGI or TXI, this can be done without reversing the related TC 295 or 299.
7. Use TC 294 with blocking series 91/ 92 to reassess a previously allowed TC 295 adjustment. If the year to be assessed is statute imminent/expired, use blocking series 95. Use TC 298 with blocking series 91/92 to reassess a previously allowed TC 299 adjustment. If the year to be assessed is statute imminent/expired, use blocking series 95.

IRM 21.5.9.5.14.7.2 – NEW

Requirement to Attach an Election Statement to the WHBAA Carryback - Statements that Must be Included in the Election Statement

1. Revenue Procedure (Rev. Proc.) 2009-52 provides that taxpayers must include an election statement with the carryback application or claim. Regardless of which method the taxpayer uses to make the election, the election statement must be submitted with the carryback. The election statement must include specific statements, which are covered in paragraphs (2), (3), and (4) below. If the election statement is not included with the carryback, see paragraph (6) below.
2. **Statements required for taxpayers that are filing a WHBAA carryback for one of the applicable years for the first time** - The election statement must state that the taxpayer is electing to apply § 172(b)(1)(H) or § 810(b)(4) under Rev. Proc. 2009-52 and that the taxpayer is not a TARP recipient nor, in 2008 or 2009, an affiliate of a TARP recipient, and must specify the length of the NOL carryback period the taxpayer elects (3, 4, or 5 years).
3. **Statements required for taxpayers that previously elected to waive the carryback period and are now electing a carryback under WHBAA** - The election statement must state that the taxpayer is revoking an NOL (or loss

from operations) carryback waiver and electing a new NOL carryback under Rev. Proc. 2009-52 and that the taxpayer is not a TARP recipient nor, in 2008 or 2009, an affiliate of a TARP recipient, and must specify the length of the NOL carryback period the taxpayer elects (3, 4, or 5 years).

4. **Statements required for taxpayers that previously filed a carryback (generally for 2 years) and are now electing a carryback under WHBAA for the same loss year** - The election statement must state that the taxpayer is amending a previous carryback application or claim and electing a new NOL carryback under Rev. Proc. 2009-52 and that the taxpayer is not a TARP recipient nor, in 2008 or 2009, an affiliate of a TARP recipient, and must specify the length of the NOL carryback period the taxpayer elects (3, 4, or 5 years).
5. While the specific statements in the election statements provided in Paragraphs (2), (3), and (4), are required, they do not have to be exact. As long as the election statement is clearly a WHBAA 2009, Section 13 irrevocable election, and the TARP statement is present, process the carryback. Below are examples of acceptable and unacceptable election statements. Use discretion in determining whether the election statement satisfies the requirements of the revenue procedure.

EXCEPTION: # #

EXAMPLE: An unacceptable election statement - "5 year carryback under the new law." This statement is unacceptable because it does not identify the specific legislative act and does not include the affirmative TARP statement.

EXAMPLE: An unacceptable election statement - "We are electing to apply § 172(b)(1)(H) under Rev. Proc. 2009-52 and claim a 4 year carryback." This statement is unacceptable because it is incomplete. The affirmative TARP statement is missing. (This statement would be acceptable if the carryback was filed by an individual (a Form 1040 filer).

6. If the election statement is not included with the carryback:
 1. Make one attempt to contact the taxpayer by phone and request the taxpayer fax you a copy of the required election statement. (See the paragraphs above for information that must be included in the statement.)
 2. If unable to contact the taxpayer by phone, reject the carryback using Letter 216C for TENTS or Letter 916C for RINTS, advising the taxpayer to resubmit the carryback with the election statement, which includes the required language, as provided in Rev. Proc. 2009-52. Use the following standard language, which will require the use of two open paragraphs. **"A carryback _____(application or claim) filed under The Worker, Homeownership, and Business Assistance Act of 2009 must include an election statement as provided in Revenue Procedure 2009-52.**

Please resubmit your carryback with the required election statement. The election statement must state that you are electing to apply Section 172(b)(1)(H) or 810(b)(4) under Rev. Proc. 2009-52, and that you are not a TARP recipient nor, in 2008 or 2009, an affiliate of a TARP recipient. The statement must specify the length of the NOL carryback period you are electing (3, 4, or 5 years)."

7. If the election statement is included with the carryback, but the statements in the election statement are insufficient or incomplete:
 1. Make one attempt to contact the taxpayer by phone and request the taxpayer fax you a copy of a revised election statement that includes the required language.
 2. If unable to contact the taxpayer by phone, reject the carryback using Letter 216C for TENTS or Letter 916C for RINTS, advising the taxpayer to resubmit the carryback with a revised election statement that includes the required language, as provided in Rev. Proc. 2009-52. Use the following standard language, which will require the use of two open paragraphs. "**The election statement you included with your carryback _____ (application or claim) is incomplete. It does not include all of the required statements as provided in Revenue Procedure 2009-52. Please resubmit your carryback with a revised election statement. The election statement must state that you are electing to apply Section 172(b)(1)(H) or 810(b)(4) under Rev. Proc. 2009-52, and that you are not a TARP recipient nor, in 2008 or 2009, an affiliate of a TARP recipient. The statement must specify the length of the NOL carryback period you are electing (3, 4, or 5 years)."**

IRM 21.5.9.5.14.7.3 – NEW

Special Rules for Eligible Small Businesses (Elections under ARRA 2009, Section 1211 and WHBAA 2009, Section 13)

1. An eligible small business (ESB) that made or makes an ARRA 2009, Section 1211 election for a loss year beginning or ending in 2008 can also make a WHBAA 2009, Section 13 election for a loss year in 2009. **(An entity that is not an ESB can only make an extended carryback election under WHBAA 2009, Section 13 for one year in either 2008 or 2009.)**
2. An ARRA 2009, Section 1211 election is irrevocable. The taxpayer cannot revoke a prior ARRA 2009 election in order to make a WHBAA 2009 election for the same tax year.
3. An ESB that made an ARRA election can be identified by the Transaction Codes 971, Action Codes 633, 634, or 635 that are input on the gain year modules to identify ARRA 2009, Section 1211 elections. See IRM 21.5.9.5.14.6.7. Searching for these transaction codes will allow you to determine that a taxpayer that made an ARRA election for 2008 would also

be entitled to make an election under WHBAA 2009, Section 13 to carry back 2009 losses.

4. A taxpayer who made an ARRA 2009, Section 1211 election for a 2008 loss year (and so had to meet the \$15M gross receipts test for the ARRA election), and then makes a WHBAA 2009, Section 13 election for a 2009 loss year, is not subject to the \$15M gross receipts test for the WHBAA election. Do not use the GRAC tool for any taxpayer making a WHBAA 2009, Section 13 election.
5. ESB's who filed an ARRA 2009, Section 1211 carryback for 2008 and take advantage of the WHBAA legislation for 2009 are subject to all the same election requirements, timeliness requirements, and other limitations as stated in the previous subsections of this IRM. See IRM 21.5.9.5.14.7.

IRM 21.5.9.5.14.7.4 – NEW

Distinguishing Between an ARRA 2009, Section 1211 Carryback and a WHBAA 2009, Section 13 Carryback when No Election Statement is Attached

1. Since ARRA 2009 and WHBAA 2009 both include amendments to IRC § 172(b)(1)(H), governing net operating losses, and include an overlapping period where both legislative acts apply (between 200801 and 200911), it may be difficult at times to determine whether the taxpayer is filing an ARRA carryback or a WHBAA carryback.
NOTE: This will not be an issue for taxpayers that file a WHBAA carryback with the required election statement attached.
NOTE: Both ARRA and WHBAA claims can be filed for loss years between 200801 and 200911. Only WHBAA carrybacks can be filed for loss years between 200912 and 201011.
2. In all cases, review the type of loss being claimed on the carryback to determine if there is any other reason, besides ARRA or WHBAA, that the taxpayer is claiming a carryback period that is longer than the normal 2 years permitted by law, such as the normal 3-year carryback period for eligible losses or the 5-year carryback period for farming losses. See IRM 21.5.9.5.3, Special Carryback/Carryforward Periods. Process these carrybacks using normal procedures.
3. If the carryback loss doesn't meet the conditions in paragraph (2), then check to see if the carryback was prepared and signed before Nov. 6, 2009. If yes, process it as an ARRA carryback. See IRM 21.5.9.5.14.6. (WHBAA legislation wasn't signed into law until Nov. 6, 2009.)
4. If the carryback was prepared and signed on or after Nov. 6, 2009, and there is no WHBAA election statement present, follow the research path below:

- a. If a 5-year carryback was claimed, did the taxpayer limit the amount of the net operating loss deduction in the 5th year to 50% of taxable income in that year? If yes, treat the carryback as a WHBAA. Follow the procedures in See IRM 21.5.9.5.14.7.2(6) to secure the required WHBAA election statement.
 - b. Is the carryback filed on a Form 1045 or Form 1139 for a tax year that normally would have expired for a tentative carryback allowance? For example, normally a 200801 tentative carryback election would have to be filed by Jan. 31, 2009 (12 months after the end of the tax year of the loss). WHBAA permits taxpayers to file tentative carrybacks for an extended period of time. See IRM 21.5.9.5.14.7(5). If yes, follow the procedures in See IRM 21.5.9.5.14.7.2(6) to secure the required WHBAA election statement.
5. If you are still uncertain as to whether the taxpayer has filed an ARRA carryback or a WHBAA carryback, perform the \$15M gross receipts test using the GRAC tool, but do not allow any rejection or disallowance letters to generate. See IRM 21.5.9.5.14.6.1.
 - a. If the taxpayer meets the \$15M gross receipts test, treat the carryback as an ARRA carryback. See IRM 21.5.9.5.14.6.
 - b. If the taxpayer does not meet the \$15M gross receipts test, treat the carryback as a WHBAA carryback and follow the procedures in See IRM 21.5.9.5.14.7.2(6) to secure the required WHBAA election statement.

IRM 21.5.9.5.14.7.5 – NEW

New TC 971 Action Codes for WHBAA 2009, Section 13 Carrybacks

1. A Work Request has been submitted requesting three new TC 971 action codes which will be used to mark the gain years when a WHBAA 2009, Section 13 carryback is processed. The new action codes will not be available until February 2010. Until then, each site must maintain a listing of all processed WHBAA carryback cases that includes:
 1. the EIN and Name Control, and
 2. the number of years elected and all the affected gain years (whether or not an adjustment was made to one or more of the years) For example if the loss year is 200905 and the taxpayer makes a 4 year election, notate "4 years - 200505, 200605, 200705 and 200805".
2. Once the new action codes are available, each site will input the transactions, using the IRM procedures in this subsection, which will be updated at that time.

IRM 21.5.9.5.14.7.6– NEW

Taxpayers Making a WHBAA 2009, Section 13 Election for More than One Year

1. When processing a WHBAA 2009, Section 13 carryback, research IDRS/CIS to ensure the taxpayer did not previously make a WHBAA 2009, Section 13 election for another tax year. A WHBAA election can be made for only one tax year that either begins or ends in 2008 or 2009 **(tax periods 200801 thru 201011)**.

REMINDER: An Eligible Small Business can make an ARRA election for one tax year that begins or ends in 2008 and also make a WHBAA election for another tax year that begins or ends in 2008 or 2009. See IRM 21.5.9.5.14.7.3. An ARRA election can be identified by the TC 971 Action Codes 633, 634, or 635 posted to the gain years. See IRM 21.5.9.5.14.6.7.

2. If the taxpayer files a WHBAA 2009, Section 13 carryback application/claim for more than one tax year, reject/disallow the second application/claim using the appropriate C Letter (see Note below) and provide the following language:
"Our records indicate you previously elected a 3, 4, or 5-year carryback period for your tax year ending _____ (enter as Jan. 1, 2008, etc.). Under Section 13 of The Worker, Homeownership, and Business Assistance Act, you can make an election for only one tax year that begins or ends in 2008 or 2009. You may refile an application claiming the normal 2-year carryback provided you send it within 12 months after the end of the year from which the carryback resulted. If you prefer, you may file an amended return on Form ____X. If you file an amended return, you should complete a separate form for each period for which you request a tax adjustment."

NOTE: The language above will require the use of two open paragraphs in the C-letter. For TENTS, issue Letter 216C. For RINTS, issue Letter 105C with appeal rights.